

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BLACKIE A. OZEKE and DEPARTMENT OF STATE,
FOREIGN BUILDING OPERATIONS, Arlington, VA

*Docket No. 02-2105; Submitted on the Record;
Issued January 7, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he was disabled from March 1, 1997 through April 12, 1999 due to his accepted employment injury.

On November 19, 1999 appellant, then a 44-year-old manual laborer, filed a notice of traumatic injury alleging that on August 13, 1996, while working for the American Embassy in Zagreb, Croatia, he was hit by a cable while unloading a container of cargo and injured his right knee, upper leg and right elbow. The Office of Workers' Compensation Programs accepted appellant's claim on March 15, 2000 for a contusion to the right leg and elbow and a lumbar sprain.

On November 19, 1999 appellant filed a claim for compensation (Form CA-7) for wage loss for the period March 1, 1997 through April 12, 1999. The record indicates that appellant was terminated from his position with the federal government in February 1997.

By letter dated March 15, 2000, the Office notified appellant that he must submit probative medical evidence from his attending physician establishing that he was totally disabled to perform work due to the work incident of August 13, 1996. By letter dated March 23, 2000, appellant responded:

"I am writing in response to your letter of March 15, 2000. I am a Nigerian citizen who was employed by the [employing establishment], as a manual laborer under a purchase order issued by [the] American Embassy in Zagreb.

"[O]n August 13[,] 1996, I was injured in a construction accident. It caused me to incur a heart attack in February 1997 and a subsequent stroke in March 1997. I am having blood clot in my heart. My employment at the [employing establishment] was terminated in February 1997. The [employing establishment] did not pay my medical expenses. Because of my injuries and illness I did not return back to work."

The Office received a medical report dated April 14, 2000 from the psychiatric clinic of the Clinical Hospital Center in Zagreb, stating that appellant was “shocked” by the August 1996 work injury and became depressed, anxious and excitable and suffered a myocardial infarction in March 1997. The physician stated:

“On the basis of all this it can be concluded, that [appellant’s] fitness for work has come to end and has gone for ever, while his condition has been constantly worsening both in the clinical manifestations and in the course of the illness, which can be seen from the medical history, the psychiatric examination and the medical documents delivered. [Appellant] is fully incapacitated for any job and this is caused only by the accident of August 13[,] 1996 mentioned above.”¹

By letter dated June 15, 2001, the Office informed appellant that the medical evidence of record was insufficient to establish that he was disabled during the claimed period as a result of the August 13, 1996 work injury. The Office advised appellant to submit a detailed narrative medical report from his physician with supporting rationale, addressing how his continuing disability was causally related to the accepted work injury. Additional medical evidence was not received.

By decision dated August 8, 2001, the Office denied appellant’s claim for compensation for the period March 1, 1997 through April 12, 1999, as the medical evidence did not support that the claimed period of disability was related to the accepted employment conditions.

The Board finds that appellant has not met his burden of proof to show that his disability from March 1, 1997 through April 12, 1999 was caused by his federal employment.

When an employee claims a new injury or condition causally related to an accepted employment injury, he or she has the burden of establishing by the weight of the reliable, probative and substantial medical evidence that the newly alleged condition and any related period of disability, are causally related to the accepted injury. It is not sufficient merely to establish the presence of a condition. In order to establish his or her claim, appellant must also submit rationalized medical evidence, based on a complete and accurate factual and medical background, showing a causal relationship between the employment injury and the claimed conditions.²

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed period of disability and the work injury on August 13, 1996.³ Causal relationship is a medical issue.⁴ The medical evidence required to establish a causal relationship, generally, is medical opinion evidence,⁵ of reasonable

¹ This report is a translation from Croatian; the Board is also unable to identify the name of the physician.

² *Armando Colon*, 41 ECAB 563 (1990).

³ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *Naomi Lilly*, 10 ECAB 560, 572-73 (1959).

medical certainty,⁶ supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷ An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's belief of causal relation unsupported by the medical record.⁸

In this case, there is insufficient medical evidence to establish that appellant was disabled from March 1, 1997 through April 12, 1999 due to the August 13, 1996 accepted work injury. Only the April 14, 2000 report from the psychiatric clinic in Zagreb, Croatia provided a medical opinion on the issue of causal relationship between appellant's disability for work during the claimed period and the August 13, 1996 work injury. The report described the August 13, 1996 work injury and discussed appellant's resulting contusions and spondylolisthesis. The physician stated that due to the work incident, appellant became depressed, scared, irritated and excitable and had nightmares with lack of sleep. The physician also mentions appellant's myocardial infarction but does not directly address how the heart attack was a result of the August 13, 1996 work injury. The report concluded that appellant was totally disabled and cannot perform any type of work and that his current condition, based on clinical manifestations, psychiatric examination and medical documents, was due to the August 13, 1996 employment injury. The Board finds that the report lacks sufficient medical rationale describing how the myocardial infarction and other diagnosed mental conditions were caused or aggravated by the accepted employment injuries of the right leg and elbow contusions and a lumbar sprain. The physician does not address the period of March 1, 1997 through April 12, 1999 for which appellant is claiming compensation. Appellant's burden consists of providing rationalized medical opinion evidence, addressing how the claimed period of disability is causally related to the accepted employment injury on August 13, 1996. The report from appellant's physician is conclusory and does not provide medical rationale explaining the relationship between appellant's conditions, the claimed period of disability and the accepted employment injury. Appellant has not met his burden of proof.⁹

The Board finds that since appellant did not submit sufficient medical evidence relating his claimed period of disability from March 1, 1997 through April 12, 1999 to the accepted employment injury on August 13, 1996, he did not meet his burden of proof in this case.

⁶ *Morris Scanlon*, 11 ECAB 384-85 (1960).

⁷ *William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *Ausberto Guzman*, 25 ECAB 362 (1974).

⁹ See *Marilyn D. Polk*, 44 ECAB 673 (1993), finding that a conclusory statement without supporting rationale is of little probative value.

The August 8, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 7, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member